

CRIPPLE CREEK EXPLORATION CORP.

IBLA 80-505

Decided August 6, 1980

Appeal from decision of Colorado State Office, Bureau of Land Management, returning, unrecorded, copies of location notices for unpatented mining claims. CMC 154929.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Generally – Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment – Mining Claims: Recordation

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.2-1, the owner of a mining claim located before Oct. 21, 1976, must file a copy of the official record of the notice of location for the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979. Failure to so file is deemed conclusively to constitute an abandonment of the claim by the owner.

APPEARANCES: Stanley Nathanson, for appellant.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Cripple Creek Exploration Corp. appeals the February 13, 1980, decision of the Colorado State Office, Bureau of Land Management (BLM), which returned, unrecorded, certain instruments submitted pursuant to section 314, Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), because they had not been received during the statutory time period.

Between November 1967 and March 1976, R. K. Wickware, agent for Harold G. Kramer and Gilbert W. Daily, located 31 lode mining

claims 1/ in secs. 19, 20, 29, and 30, T. 14 S., R. 69 W., sixth principal meridian, Teller County, Colorado.

On October 20, 1979, BLM received a letter from Stanley Nathanson of the Cripple Creek Joint Venture, in which reference was made to the 31 unpatented mining claims. Subsequently, on November 23, 1979, a second letter from Nathanson was received, stating "the enclosed material" inadvertently had been left out of the package received by BLM on October 20. The "material" consisted of copies of the official records of the 31 location notices, 2/ affidavits of annual labor for the years ending August 31, 1978, and August 31, 1979, and a check in the amount of \$155, service fees for 31 location notices. These instruments and the check were returned with the decision of February 13, 1980. This appeal ensued.

Appellant does not allege the required documents were filed with BLM before October 22, 1979. It says that the subject claims were property of a joint venture consisting of Great Basins Petroleum Co. and Cripple Creek Joint Venture. Cripple Creek Joint Venture is a joint venture of Cripple Creek Exploration Corp. and National Treasure Mines. Great Basins Petroleum was the designated operator and, as such, was responsible for filing the documents required by FLPMA. As Great Basins Petroleum had not submitted any documents to BLM, Cripple Creek Exploration attempted to comply with the statutory requirements but was compelled to obtain the necessary copies of the location certificates from Great Basins Petroleum. When the instruments were assembled, Cripple Creek Exploration then transmitted them to BLM, where they arrived and were date stamped November 23, 1979. Cripple Creek Exploration asserts its intention to hold the subject claims was evident in its letter received by BLM October 20, 1979, and that it should not be penalized by the failure of Great Basins Petroleum, on whom Cripple Creek Exploration relied.

It is not disputed that the required copies of the location notices and requisite service fee were received by BLM on November 23,

1/ The names of the claims and dates of location are:

Janie	November 10, 1967	Genevieve	November 10, 1967
Columbine No. 1	May 15, 1971	Columbine No. 2	May 15, 1971
Columbine No. 3	May 25, 1971	Columbine No. 4	May 25, 1971
Columbine No. 5	May 25, 1971	Columbine No. 6	May 25, 1971
Columbine No. 7	May 25, 1971	Columbine No. 8	May 25, 1971
Columbine No. 9	May 25, 1971	Columbine No. 10	May 25, 1971
Columbine No. 11	May 25, 1971	Columbine No. 12	May 25, 1971
Columbine No. 13	May 25, 1971	Columbine No. 14	May 15, 1971
Columbine No. 15	March 5, 1976	Columbine No. 16	March 5, 1976
Columbine No. 17	March 5, 1976	Columbine No. 18	March 5, 1976
Columbine No. 19	March 5, 1976	Columbine No. 20	March 5, 1976
Columbine No. 21	March 5, 1976	Columbine No. 22	March 5, 1976
Columbine No. 23	March 5, 1976	Columbine No. 24	March 5, 1976
Columbine No. 25	March 5, 1976	Columbine No. 26	March 5, 1976
Columbine No. 27	March 5, 1976	Columbine No. 28	March 6, 1976
Columbine No. 29	March 6, 1976		

2/ See n.1, supra.

1979. Nor is it disputed that Cripple Creek Exploration sent a letter to BLM October 20, 1979, with some information relative to the unpatented mining claims. But that information did not satisfy the statutory requirements, which, at a minimum, require that there be a timely filing of a location notice and payment of a filing fee. This Board has frequently held that there can be no recordation of mining claim location notices until the correct service fee has been paid. Beth Mallory, 47 IBLA 296 (1980); L. Leon Jennings, 47 IBLA 47 (1980); Joe B. Cashman, 43 IBLA 239 (1979). See Topaz Beryllium Co. v. United States, 479 F. Supp. 309 (D. Utah 1979).

[1] Under section 314 of FLPMA, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, the owner of a mining claim located before October 21, 1976, had to file a copy of the official record of the notice or certificate of location with the proper BLM office on or before October 22, 1979. These requirements are mandatory and failure to comply must be deemed conclusively to constitute an abandonment of the claims by the owners, and the claims are void. 43 CFR 3833.1-2(d); Loyal Dee Griggs, 47 IBLA 293 (1980); M. E. Rogers, 47 IBLA 196 (1980); Glen J. McCrorey, 46 IBLA 355 (1980); John Walter Chaney, 46 IBLA 229 (1980).

Appellant has requested that the late submission of the location notices be waived and it not be penalized for the failure of one of its partners to make a timely filing of the location notices. There is no authority under FLPMA to accept late filed submissions for recordation, as if they were timely filed, in order to escape the consequences of the statute. See Solicitor's Opinion M-36889, 84 I.D. 188 (1977).

If the lands remain open to mining location, and subject to intervening rights of third parties, including the Government, appellant may relocate the claims and thereafter meet the recordation requirements of FLPMA.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

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Douglas E. Henriques  
Administrative Judge

We concur.

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James L. Burski  
Administrative Judge

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Edward W. Stuebing  
Administrative Judge

